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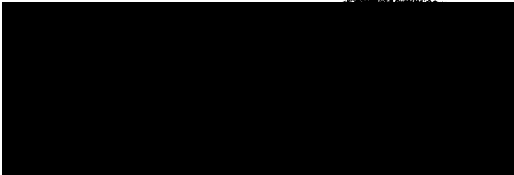
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
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U.S. Citizenship
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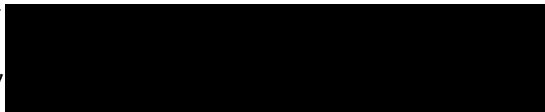
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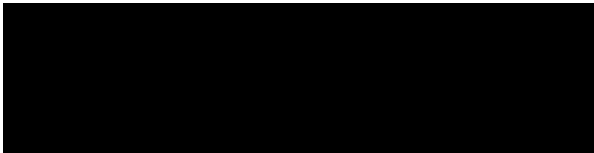
FILE: WAC 02 057 53750 Office: CALIFORNIA SERVICE CENTER Date: JAN 21 2004

IN RE: Petitioner:
Beneficiary



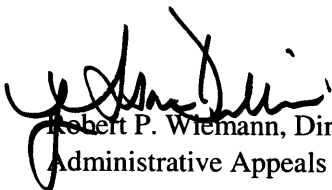
PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a restoration contracting company that seeks to employ the beneficiary as an industrial engineer assistant. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the director's request for additional evidence; (3) the petitioner's response to the director's request; (4) the director's denial letter; (5) the petitioner's motion to reconsider; (6) the director's decision affirming the denial of the petition; and (7) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an industrial engineering assistant. Evidence of the beneficiary's duties includes: the I-129 petition; the petitioner's November 9, 2001 letter in support of the petition; and the petitioner's response to the director's request for evidence. According to this evidence, the beneficiary would perform duties that entail: monitoring purchase orders; maintaining cost controls; planning the use of facilities; and analyzing statements, organizational charts, and workers' job duties. The petitioner indicated that a qualified candidate for the job would possess a bachelor's degree in industrial engineering.

The director found that the proffered position was not a specialty occupation because the job is not an industrial engineering position; it is an engineering technician position. Citing to the Department of Labor's *Occupational Outlook Handbook (Handbook)*, 2002-2003 edition, the director noted that the minimum requirement for entry into the position was not a baccalaureate degree or its equivalent in a specific specialty. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel states that the proffered position combines the duties of a cost estimator with an industrial engineer, and is not an engineering technician position. According to counsel, the proffered position is a "Job Zone 4" occupation (referring to the Department of Labor's *O*Net*), which requires a degree. Counsel states further that the *Dictionary of Occupational Titles (DOT)* assigns the position an SVP rating of 7, which according to counsel, requires a degree to enter into the position. Finally, counsel states, in part, that the position should be considered a specialty occupation because: more than 1000 colleges and universities offer a degree in industrial engineering; the petitioner's other employees "have degrees"; and "our office represents a number of construction companies and we have never seen anyone without a degree filling this job."

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. The AAO does not concur with counsel that the proffered position is that of an industrial engineer and a cost estimator. None of the beneficiary's job duties entails the level of responsibility of either occupation. A review of the Engineering Technician job description in the *Handbook* confirms the accuracy of the director's assessment to the effect that, the job duties parallel those responsibilities of a technician. No evidence in the *Handbook* indicates that a baccalaureate or higher degree, or its equivalent, is required for an engineering technician job.

Counsel's reference to and assertions about the relevance of information from *O*Net* and the *DOT* are not persuasive. Neither the *DOT's* SVP rating nor a Job Zone category indicates that a particular occupation requires the attainment of a baccalaureate or higher degree, or its equivalent, in a specific specialty as a minimum for entry into the occupation. An SVP rating and Job Zone category are meant to indicate only the total number of years of vocational preparation required for a particular position. Neither classification describes how those years are to be divided among training, formal education, and experience, nor specifies the particular type of degree, if any, that a position would require.

Counsel's comments regarding the type of credentials required for the proffered position in the petitioner's industry are without merit. Counsel's personal observations do not constitute evidence in these proceedings. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, although counsel observes that more than 1000 U.S. colleges or universities offer degrees in industrial engineering, such an observation has no relevance to these proceedings. The director did not state that the job of industrial engineer is not a specialty occupation. The director concluded correctly that the proffered position is not one of an industrial engineer and, therefore, it does not require a baccalaureate degree, or its equivalent, in a specific specialty.

Regarding parallel positions in the petitioner's industry, the petitioner submitted Internet job postings for industrial engineers. There is no evidence, however, to show that the employers issuing those postings are similar to the petitioner, or that the advertised positions are parallel to the instant position. The majority of the advertisements are for industrial engineers in the manufacturing industry. In addition to the proffered position not being an industrial engineering position, the petitioner's industry is not in manufacturing. Thus, the advertisements have little relevance.

The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. On appeal, counsel states that all of the petitioner's employees hold degrees, including the person who the beneficiary would replace. The record, however, does not contain any evidence of the petitioner's past hiring practices and therefore, the petitioner has not met its burden of proof in this regard. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Finally, the AAO turns to the criterion 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

To the extent that they are depicted in the record, the duties do not appear so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. Therefore, the evidence does not establish that the proffered position is a specialty occupation under 8 C.F.R. § 214.2(h)(4)(iii)(A)(4).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.